

I also note that the bill reflects installation charges for a loop (the \$140), but no installation charges for the port. I would like to understand BellSouth's position on what it intends to bill AT&T for UNE-P and compare this to what has been ordered.

In addition to the above disputed items, BellSouth has yet to bill AT&T for other agreed upon UNE related charges. Those items are:

Item	Status
BellSouth agreed to bill the following charges on the CRIS bill: <ul style="list-style-type: none">• Interoffice Common Transport• Tandem Switching• Local Switching• Operator Call Handling• Directory Assistance Access Service• Directory Assistance Call Completion	BellSouth has not separately identified any of the following charges on the CRIS bill to date: <ul style="list-style-type: none">• Interoffice Common Transport• Tandem Switching• Local Switching• Operator Call Processing• Directory Assistance Access Service• Directory Assistance Call Completion
BellSouth agreed to bill the following elements on the CABS bill: <ul style="list-style-type: none">• Directory Access to DA Service• SS7 Signaling• Directory Assistance Transport• Directory Assistance Database Service	BellSouth has not separately identified any of the following charges on the CABS bill to date: <ul style="list-style-type: none">• Directory Access to DA Service• SS7 Signaling• Directory Assistance Transport• Directory Assistance Database Service

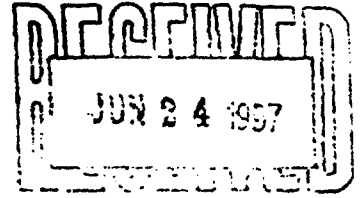
Margaret, I'm not clear if the issues outlined above result because BellSouth does not currently have the capability to bill Unbundled Network Elements Combined as agreed to with AT&T or because BellSouth has changed its position on how it will bill Unbundled Network Elements Combined. Please advise me in writing of the cause of the billing errors and a date for resolution by Monday, August 11, 1997. I can be reached on 404-810-8562.

Jill Williamson

Copy to: Sue Ray
Pamela Nelson
James Hill
Quinton Sanders

ATTACHMENT 34

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION



In re: Petitions by AT&T Communications)
of the Southern States, Inc.; MCI)
Telecommunications Corporation; MCI Metro)
Access Transmission Services, Inc. for)
arbitration of terms and conditions of a)
proposed agreement with BellSouth)
Telecommunications, Inc. concerning)
interconnection and resale under the)
Telecommunications Act of 1996)

Docket No. 960833-TP

Docket No. 960846-TP

Filed: June 23, 1997

**BELLSOUTH'S RESPONSE AND MEMORANDUM IN OPPOSITION TO
AT&T'S MOTION TO COMPEL COMPLIANCE**

BellSouth Telecommunications, Inc. ("BellSouth"), hereby files, pursuant to Rule 25-22.037, Florida Administrative Code, its response and memorandum in opposition to AT&T's Motion to Compel Compliance, and states the following:

AT&T's Motion to Compel Compliance should be denied because it is based upon fundamental mischaracterizations of Orders of the Florida Public Service Commission ("Commission") and of the current status of the "rebundling" issue. Further, the arguments raised by AT&T in its Motion present perhaps the most obvious example to date of AT&T's attempts to misconstrue to its benefit any issue left unresolved by the Commission's previous Orders. For these reasons, AT&T's Motion should be denied and this Commission should further issue unavoidable directions to

AT&T as to what it may (and may not) do pursuant to the Orders that have been entered.

The current situation is that AT&T has, as set forth in its motion, requested a trial in which it would be allowed to purchase unbundled network elements ("UNEs") in combinations that replicate existing BellSouth services. AT&T proposes to pay for the trial service (and later all BellSouth services recreated through rebundling) at the total price of the UNEs that are utilized. To date, BellSouth has declined to allow AT&T to do this because, contrary to AT&T's assertions, the Commission has not authorized (and, in fact, has expressed concern about the prospect of) recombination of UNEs at the prices AT&T requests. Again, AT&T is not simply purchasing UNEs, but rather the preassembled combination of UNEs that comprise a BellSouth service. AT&T's request/demand, thus, does not involve any real unbundling. Instead, AT&T desires to simply buy the service at the price of the total UNEs that comprise the service.

The proper resolution of this matter turns upon three aspects of this Commission's previous Orders: (1) the price for UNEs has been set; (2) the Commission has ordered that AT&T may recombine UNEs in any way that it wishes; (3) the Commission has also stated that it has not ruled upon the price of a rebundled service, i.e., UNEs that are combined to replicate an existing BellSouth retail service. AT&T would, no doubt, agree that the first two Commission decisions set forth above are pertinent to this dispute. In fact, AT&T relies upon both decisions in its Motion. Inexplicably, AT&T has simply decided to act as if the third conclusion reached by this Commission does not exist.

In its Motion, AT&T implies that this Commission's Final Order On Motions For Reconsideration (Order No. PSC-97-0298-FOF-TP, Issued March 19, 1997) somehow supports AT&T's claim that the price for rebundled network elements has been set. To the contrary, the Commission's Order contained the following language on this point:

In our original arbitration proceeding in this docket, we were not presented with the specific issue of the pricing of recombined elements when recreating the same service offered for resale

Furthermore, we set rates only for the specific unbundled elements that the parties requested. Therefore, it is not clear from the record in this proceeding that our decision included rates for all elements necessary to recreate a complete retail service. Thus, it is inappropriate for us to make a determination on this issue at this time.

(Order, p. 7).

The Commission, however, further stated that it "would be very concerned if recombining network elements to recreate a service could be used to undercut the resale price of the service." (Order, p. 8).

In an effort to avoid any confusion on this point, BellSouth submitted to the Commission for approval a final arbitrated agreement that included language to reflect both the Commission's pronouncement that it had not ruled upon the price of recombined elements and the Commission's stated concern. Specifically, the language proposed by BellSouth would have stated that "[f]urther negotiations between the parties should address the price of a retail service that is recreated by combining UNEs," and that this price should not undercut the resale price of any retail service.

AT&T responded to this proposed language in its Motion to Approve Final Arbitrated Interconnection Agreement by, first, making a passing mention of this

"Commission's concerns expressed in the Reconsideration Order about the possibilities that the price of the combination of UNEs used to provide a service may be less than the equivalent resale price". AT&T then coyly observed (without stating its own belief) that the Commission "does not believe that it is possible to have this situation because not enough UNEs have been approved to fully duplicate a BellSouth service". (Motion, p. 4). AT&T then characterized the Commission's concerns regarding this pricing issue as simply "speculative". Id. AT&T further stated that "if it ever arises", the language in the agreement is adequate to resolve the point.¹ BellSouth, believed to the contrary, and stated so in its Response to AT&T's Motion.

Nevertheless, on May 27, 1997, the Commission entered an Order (Order No. PSC-97-0602-FOF-TP) in which it required both parties to sign an agreement that included exactly the language prescribed in the Commission's previous Final Order Approving Arbitrated Agreement. As to the language that BellSouth sought to insert into the contract concerning the price of rebundled elements, the Commission stated the following:

we expressed concerns with the potential pricing of UNEs to duplicate a resold service at our Agenda Conference, and we expressed our concerns in our Order in dicta; however, we stated that the pricing issue associated with the rebundling of UNEs to duplicate a resold service was not arbitrated. . . Accordingly, BellSouth's proposed language shall not be included in the agreement.

(Order, p. 7) (emphasis added).

¹ The language referred to by AT&T was the extremely limited language of § 36.1 that referred to negotiations to eliminate duplicate charges that might result from purchasing multiple UNEs.

On June 9, 1997, less than fourteen days after the entry of the above-referenced Order, the situation that BellSouth sought to avoid has come to pass. AT&T has selectively utilized the language from the Commission's original Order, as well as this Commission's decision not to clarify that language in subsequent orders, to argue that it is entitled to order combinations of UNEs that replicate BellSouth services and to have this reconstituted service at the total of the UNE prices. Amazingly, in arguing for this, AT&T has characterized all of the Commission's Orders, including those quoted above, as supporting the singularly misguided proposition that it is entitled to recombine UNEs in a way that replicates BellSouth's retail service and to thereby undercut the resale prices of those services. It is interesting that after relying so heavily on this Commission's uncertainty as to whether this recombination is currently possible, AT&T has definitively demonstrated that it believes it can be done by demanding that it immediately be done. It is also noteworthy that so soon after AT&T characterized the eventuality of this pricing conflict as remote and speculative, it acted to make it come to pass.

AT&T's mischaracterizations notwithstanding, the fact remains that this Commission has not ruled on the price of elements that are recombined to recreate BellSouth services. For this reason, AT&T should not be allowed to attempt to utilize the portions of this Commission's rulings that are favorable to its position while ignoring the portions of this Commission's Orders that contradict its argument to bring about a result that is clearly not intended by this Commission's Orders.

Again, this Commission has stated that it has not ruled on the price of services recreated by rebundling. If AT&T wants to purchase recombined services in this manner, it should negotiate with BellSouth to arrive at the appropriate price. Because BellSouth believes that this is the proper result, BellSouth sent to AT&T a letter on June 10, 1997² in which it invited AT&T to negotiate this currently unresolved issue. (attached as Exhibit A). AT&T responded to BellSouth's invitation with a letter dated June 16, 1997 (attached as Exhibit B). In this letter, AT&T states that its position on the price of rebundled elements is set forth in the subject Motion. For this reason, AT&T asserts that any further negotiations should be limited to "eliminating any duplicate charges when two or more UNEs are combined." (letter, p. 1). This letter is telling in two respects: First, once again, AT&T has acted in precisely the manner that BellSouth was concerned it would. In the Motion to Approve cited above, AT&T contended that the language of § 36.1 could be used as a basis to negotiate the price of recreated services, "if [the issue] ever arises". Now AT&T declines to negotiate anything under the provisions of 36.1 other than the elimination of duplicate charges.

Second, AT&T appears now to categorically refuse to negotiate the price of services recreated through sham unbundling. Instead, AT&T contends, in effect, that the pricing issue is moot. AT&T has a price at which it may purchase individual UNEs, and it plans to replicate existing services with these UNEs in a way that undercuts the resale price of these services. The only difference in AT&T's previous position and its current position is that before it made token acknowledgment of this Commission's

² This letter was sent by BellSouth the day after it signed the Interconnection Agreement, and before being served with a copy of AT&T's Motion.

concerns before dismissing them. Now AT&T ignores these concerns altogether while blatantly acting in a manner that contradicts the clear language of this Commission's prior Orders.

This Commission has specifically noted in at least two previous Orders that it has not set the price for recombined services. AT&T should not be allowed to misuse a part of this Commission's previous Orders to dictate the result of an issue that this Commission has not addressed. Instead, AT&T's Motion should be denied, and it should be directed to negotiate with BellSouth the price of the service.

Further, AT&T's Motion brings into focus a related problem. Although certainly the parties should negotiate this point, AT&T, to date, has refused to do so. Thus, a resolution of this issue by the parties is highly unlikely, which presents a quandary. Even if this Commission properly denies AT&T's attempt to obtain services through sham unbundling at a price that undercuts the resale price, there is nothing to stop AT&T in the future from purchasing the elements separately and then recombining them without BellSouth's knowledge. By doing this, AT&T would be able to ignore the concerns of this Commission and the clear language of the Order on Reconsideration to obtain in a different manner that which it is not entitled to, i.e., recreated services at a price that undercuts the resale price. Thus, in order to prevent action by AT&T that contravenes the Orders of this Commission and the clear statement that the price of recreated service has not been set, AT&T must be prevented from taking the next step and rebundling separately purchased UNEs to undercut resale prices.

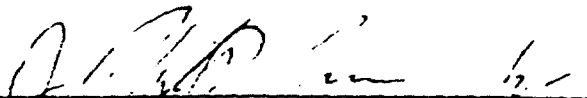
Finally, in Paragraph 7 of AT&T's Motion, there is a brief and cryptic description of an alleged failure by BellSouth "to record and to provide the requested UNE data." Although it is difficult to know from Paragraph 7 the precise nature of AT&T's complaint, BellSouth believes that AT&T has requested that BellSouth conduct a trial of the ability to bill services purchased by AT&T at the sham rebundled price. In other words, AT&T not only wants to purchase services at the rebundled UNE price despite the lack of authority to do so, it also wants a trial of the ability of BellSouth to render a bill to AT&T at the unauthorized UNE price. Since this Commission has not authorized AT&T to recombine UNEs to undercut resale prices, BellSouth should not be required to conduct a trial of its ability to render a bill at the improper price.³

WHEREFORE, BellSouth respectfully requests the entry of an Order denying AT&T's Motion, and further ordering that AT&T may not rebundle elements in a manner that replicates existing services unless and until a price is set for this rebundling through negotiation or arbitration.

³ Moreover, BellSouth does not currently have the ability to bill in this manner. That capacity would have to be developed, and this development should not be ordered for the reasons set forth above.

RESPECTFULLY SUBMITTED this 23rd day of June, 1997.

BELLSOUTH TELECOMMUNICATIONS, INC.



ROBERT G. BEATTY

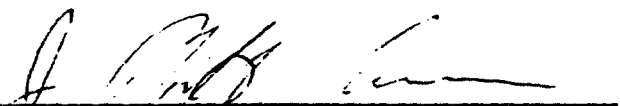
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